IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ROBERT K. LOCKE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 02-1329-SLR
	)	
GAMBACORTA BUICK, INC.,	)	
	)	
Defendant.	)	

Robert K. Locke, New Castle, Delaware. Pro se Plaintiff.

Michael J. Goodrick, Esquire, Wilmington, Delaware. Counsel for Defendant.

MEMORANDUM OPINION

Dated: July 19, 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On July 24, 2002, Robert K. Locke ("plaintiff"), acting pro se, filed the present action against Gambacorta Buick, Inc. ("defendant"), alleging racial discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII"). (D.I. 3) Plaintiff, an African-American man, claims that he was denied "perks" and other benefits enjoyed by a similarly-situated white employee from June 1, 2000 to April 18, 2001. (Id.) At the close of discovery, defendant filed the pending motion for summary judgment. (D.I. 26) The court has jurisdiction pursuant to 28 U.S.C. § 1331. For the reasons to follow, defendant's motion for summary judgment is granted.

II. BACKGROUND

Plaintiff was employed by defendant in various positions from September 1992 until April 2001, when he left of his own volition. (D.I. 27 at 3) Plaintiff alleges that, during the period lasting from June 1, 2000 to April 18, 2001, he was subjected to ongoing racial discrimination by defendant. (D.I. 3) At the time of the alleged discrimination, plaintiff was a manager at a Buick dealership operated by defendant. (Id.) Plaintiff claims that he was paid less, received less vacation, and worked more days and hours than Joe Lobozzo ("Lobozzo"), a white employee of Gambacorta Chrysler Pontiac, Inc. ("GCP") with

a similar job.[1] (Id. at ¶ 10) Plaintiff also alleges that, unlike Lobozzo, he was never given the use of a company car with free gasoline. (Id.) When plaintiff asked his superiors why he did not receive the same "perks" as Lobozzo, defendant told him that Lobozzo had made more of a contribution to the company. (D.I. 20 at § 1 pp. 36-37; 27 at 5) Defendant also stated that "there was no comparison of jobs," and that plaintiff's and Lobozzo's job responsibilities were not the same. (D.I. 20 at § 1 p. 49) On June 11, 2001, plaintiff filed a charge of racial discrimination with the Equal Employment Opportunity Commission ("EEOC"). (D.I. 3 at ¶ 8) The EEOC subsequently found that it was "unable to conclude that the information obtained establishes violations of the statutes." (Id. at 4) Despite this, the EEOC cautioned that its finding did not necessarily mean that defendant was in compliance with Title VII. (Id.)

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P.

[1]Although there is evidence suggesting that GCP and the Buick dealership operated by defendant are distinct entities, the court will treat the two dealerships as though they are under the common ownership and control of the Gambacorta brothers for the purposes of this opinion.

56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. Celotex Corp.

v. Catrett, 477 U.S. 317, 322 (1986). With respect to summary judgment in discrimination cases, the court's role is "to determine whether, upon reviewing all the facts and inferences to be drawn therefrom in the light most favorable to the plaintiff, there exists sufficient evidence to create a genuine issue of material fact as to whether the employer intentionally discriminated against the plaintiff." Revis v. Slocomb Indus., 814 F. Supp. 1209, 1215 (D. Del. 1993) (quoting Hankins v. Temple Univ., 829 F.2d 437, 440 (3d Cir. 1987)).

IV. DISCUSSION

Discrimination claims under Title VII are analyzed under the burden-shifting framework set forth by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).[2] First, the plaintiff "must carry the initial burden under the statute of establishing a [prima facie] case of racial discrimination." Id. at 802. A plaintiff can accomplish this by

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[2]While the factors enunciated in McDonnell Douglas dealt specifically with employment cases that ended in termination, the Third Circuit has recognized that

> the elements of a prima facie case depend on the facts of a particular case. Thus, a prima facie case cannot be established on a one-size-fits-all basis. In fact, the relevant question . . . is whether [the plaintiff] suffered some form of "adverse employment action" sufficient to evoke the protection of Title VII.

Jones v. Sch. Dist. of Philadelphia, 198 F.3d 403, 411 (3d Cir. 1999) (internal citations omitted). As such, "something less than a discharge could be an adverse employment action." Id.

proving that: (1) he is a member of a protected class; (2) he suffered some form of adverse employment action; and (3) this action occurred under circumstances that give rise to an inference of unlawful discrimination such as might occur when a similarly-situated person not of the protected class is treated differently. Boykins v. Lucent Techs., Inc., 78 F. Supp.2d 402, 409 (E.D. Pa. 2000), aff'd, No. 00-1087, 2002 WL 402718 (3rd Cir. Feb. 4, 2002) (citing Jones v. Sch. Dist. of Philadelphia, 198 F.3d 403, 410 (3d Cir. 1999)); see also Berry v. E.I. DuPont de Nemours & Co., 625 F. Supp. 1364, 1377 (D. Del. 1985) ("A plaintiff may establish a [prima facie] case of discrimination by showing that other similarly-situated employees of a different race were treated differently from the plaintiff"). Once the plaintiff has established a prima facie case of racial discrimination, "the burden shifts to the [employer] 'to articulate some legitimate, nondiscriminatory reason for the employee's rejection.'" Jones, 198 F.3d at 410 (quoting McDonnell Douglas, 411 U.S. at 802). "Finally, should the [employer] carry this burden, the plaintiff then must have an opportunity to prove by preponderance of the evidence that the legitimate reasons offered by the [employer] were not its true reasons, but were a pretext for discrimination." Id. at 410 (citing Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981)). Throughout the court's analysis, "[t]he ultimate

burden of persuading the trier of fact that the [employer] intentionally discriminated against the plaintiff remains at all times with the plaintiff." Id. (citing Burdine, 450 U.S. at 253) (first alteration in original).

Applying this framework to the issue at bar, the court finds no genuine issue of material fact concerning plaintiff's allegation that defendant engaged in racial discrimination in the workplace. Focusing on the first factor identified in McDonnell Douglas, plaintiff has failed to prove a prima facie case of employment discrimination. Plaintiff, a member of a protected class, claims to be the victim of a racially-motivated adverse employment action because Lobozzo, a similarly-situated white manager, received "perks" and benefits that plaintiff did not receive. (D.I. 20 at § 1 p. 36) The record, however, indicates that Lobozzo and plaintiff were not situated similarly. By the time plaintiff entered defendant's employ as a lot attendant in 1992, Lobozzo already had been working for GCP and its predecessor company for thirty-four years, had been a "Class A Mechanic" for approximately twenty years, and had spent fourteen years as a shop foreman at GCP. (D.I. 27 at 5-6) In contrast, plaintiff's previous work experience included one year in a mail room, two years as a warehouseman for a newspaper distributer, and three years in auto detailing. (Id. at 3) Additionally, Lobozzo, unlike plaintiff, was "qualified in the use of heavy

equipment and had used this experience to the benefit of his employer during the course of his employment." (D.I. 27 at 6) Because plaintiff and Lobozzo were, in fact, dissimilarly-situated, plaintiff cannot prove that the differences between his and Lobozzo's benefits and privileges were racially motivated. Thus, the court concludes that plaintiff has failed to establish a prima facie case of racial discrimination.

Assuming, arguendo, that plaintiff could establish a prima facie case by showing that he and Lobozzo were situated similarly, his claim would falter under the third prong of the McDonnell Douglas framework.[3] Under the third prong, plaintiff must prove by a preponderance of the evidence that defendant's explanation for why plaintiff was treated differently than Lobozzo was a pretext designed to camouflage racially-motivated employment practices. Plaintiff, however, has failed to establish the presence of such a pretext from the facts at bar. Nothing in the record suggests that defendant's proffered explanation was designed to cover up discriminatory employment practices. On the contrary, defendant offered a legitimate, neutral reason for treating plaintiff differently from Lobozzo. Lobozzo had worked for defendant for an extended period of time

[3]By citing Lobozzo's extensive employment history and superior qualifications, defendant has met its burden under the second prong of the McDonnell Douglas framework by providing a legitimate and nondiscriminatory reason for the inequitable treatment afforded plaintiff and Lobozzo.

and possessed many more skills and experiences than plaintiff. Moreover, plaintiff has admitted that he suffered, in actuality, no racially-motivated disparate treatment. When asked at his deposition whether he had been subjected to mistreatment or harassment based on his race, plaintiff replied only that there were joking comments made that "could have [gone] either way" and that "could have been worded differently." (D.I. 28 at A-27) In his complaint to the EEOC, plaintiff wrote that he had been a "witness to racial incidents." (D.I. 20 at § 3 p. 5). Plaintiff failed, however, to explain exactly what he meant by that statement, and the record lacks any evidence to show that these "racial incidents" ever occurred, let alone which employees were involved or what racially-motivated conduct supposedly took place. Furthermore, the EEOC was unable to conclude that defendant had discriminated against plaintiff because of his race. (D.I. 3 at 4) This court has previously held that a "plaintiff's conclusory assertion that he was treated differently by itself is insufficient to raise an inference of discrimination." Berry v. E.I. DuPont de Nemours & Co., 625 F. Supp. 1364, 1377 (D. Del. 1985) (citing Nix v. WLCY Radio/Rahall Communications, 738 F.2d 1181, 1186-87 (11th Cir. 1984); Brownlow v. Gen. Servs. Employees Union, 35 F.E.P. Cases 568, 571 (N.D. Ill. 1984)). Accordingly, the court concludes that plaintiff's claim fails to withstand scrutiny under both the first and third

prongs of the McDonnell Douglas burden-shifting analysis. As such, the court grants defendant's motion for summary judgment.[4]

V. CONCLUSION

For the reasons stated above, the court concludes that defendant has demonstrated that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. Consequently, the court grants defendant's motion for summary judgment. An appropriate order shall issue.

[4]The court declines to grant attorney's fees to defendant because plaintiff's complaint was neither made in bad faith nor "'unfounded, meritless, frivolous, or vexatiously brought.'" Christiansburg Garment Co. v. Equal Employment Opportunity Comm'n, 434 U.S. 412, 421 (1978) (quoting United States Steel Corp. v. United States, 519 F.2d 359, 361 (3d Cir. 1975)). As a pro se litigant, plaintiff appeared to have a sincere belief in the merits of his claim and did not seem to act with any malicious or vindictive intent.

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GAMBACORTA BUICK, INC.,	)	
	)	
Defendant.	)	

O R D E R

At Wilmington, this 19th day of July, 2004, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendant's motion for summary judgment (D.I. 26) is granted.

2. The Clerk of Court is directed to enter judgment against plaintiff and in favor of defendant.

Sue L. Robinson
United States District Judge